



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170413393-8487-02]

RTID 0648-XB607

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Commercial Quota Holdback in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; commercial quota holdback.

SUMMARY: NMFS issues this temporary rule to withhold a portion of the red grouper commercial allocation for the 2022 fishing year in anticipation of an upcoming rulemaking that would, among other measures, reduce the commercial annual catch limit (ACL) and annual catch target (ACT) through Amendment 53 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This action would withhold the distribution of red grouper and gag multi-use individual fishing quota (IFQ) allocation on January 1, 2022, in the amount equal to the anticipated reduction in the allocation for shareholders in the groupers and tilefishes IFQ (GT-IFQ) program.

DATES: This temporary rule is effective from 12:01 a.m., local time, on January 1, 2022, through 12:01 a.m., local

time, on June 1, 2022.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico (Gulf) reef fish fishery, which includes red grouper, is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Council has submitted Amendment 53 to the FMP for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce (Secretary), Amendment 53 would modify the allocation of Gulf red grouper catch between the commercial and recreational sectors, specify a lower overfishing limit and acceptable biological catch, and reduce both sectors' ACLs and ACTs. The final rule for Amendment 53 is not expected to be effective until after January 1, 2022, but prior to June 1, 2022. With respect to the commercial ACL and ACT, Amendment 53 proposes to reduce the current commercial ACL from 3.16 million lb (1.43 million kg) to 2.53 million lb (1.15 million kg) and the current commercial ACT from 3.00 million lb (1.36 million kg) to 2.40 million lb (1.09 million kg).

Amendment 36A to the FMP addressed how to distribute

allocation to IFQ shareholders in years in which there is an anticipated reduction of the commercial allocation (83 FR 27297; June 12, 2018). This situation would generally occur if the Council approved an action to reduce the commercial allocation for any IFQ species or multi-species share category but NMFS could not complete the associated rulemaking before January 1, the start of the fishing year. Under the GT-IFQ program, annual allocation is distributed to IFQ shareholders on January 1, and most IFQ program participants begin to use or transfer their allocation early in each year. After shareholders begin transferring or landing allocation, NMFS is not able to retroactively withdraw allocation from shareholder accounts if a commercial quota decrease became effective after the beginning of the fishing year. Thus, Amendment 36A and the regulations at 50 CFR 622.22(a)(4) allow NMFS to anticipate a decrease in the commercial allocation of GT-IFQ species or multi-species share categories after the start of a fishing year and withhold distribution of allocation equal to the amount of the expected decrease. NMFS would distribute the remaining portion of the annual allocation to shareholders on January 1. If the final rule to implement the associated commercial allocation reduction is not effective by June 1, 2022, then NMFS would distribute the withheld allocation back to the current shareholders, as determined on the date the withheld IFQ allocation is

distributed.

The Amendment 53 notice of availability published on December 9, 2021, and solicits public comments through February 7, 2021 (86 FR 70078, December 9, 2021). NMFS anticipates publishing a proposed rule to implement Amendment 53 shortly with a 30-day public comment period. NMFS must approve, partially approve, or disapprove Amendment 53 by March 9, 2021 (16 U.S.C. 1854(a)).

Therefore, to allow the catch limits in Amendment 53 to be effective for the 2022 fishing year, this temporary rule will withhold 0.60 million lb (0.27 million kg) from the commercial allocation of 3.00 million lb (1.36 million kg) on January 1, 2022. In addition, this temporary rule will withhold 30,048 lb (13,630 kg) from the commercial gag multi-use allocation of 159,582 lb (72,385 kg) on January 1, 2022. The gag multi-use quota is calculated by the following equation:

$$\text{gag multi-use allocation} = 100 * ((\text{red grouper commercial ACL} - \text{red grouper commercial quota})) / (\text{gag commercial quota})$$
 where the gag commercial quota is 939,000 lb (425,923 kg). If NMFS disapproves Amendment 53 or Amendment 53 is not implemented by June 1, 2022, NMFS will distribute withheld red grouper and gag multi-use IFQ allocation to current shareholders based on the date the withheld IFQ allocation is distributed.

It is unnecessary to take any action with respect to

the recreational ACL and ACT at this time because, if necessary, NMFS will constrain recreational landings to the applicable catch limit through a temporary rule during the 2022 fishing year to close the recreational sector. The analysis in Amendment 53 indicates that the earliest NMFS would expect to close the recreational sector would be the end of July 2022, with a closure most likely in November or December of 2022.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is taken under 50 CFR 622.22(a)(4), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866, and other applicable laws.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulation at 50 CFR 622.22(a)(4) has already has already been subject to notice and public comment, and the public is aware that NMFS is reviewing Amendment 53 for approval and implementation. Therefore, all that remains is to notify the public that a portion of the commercial Gulf red grouper and the gag multi-use IFQ allocation in 2022 will be withheld to allow for the implementation of Amendment 53 in 2022, if approved. Such

procedures are contrary to the public interest because notice and comment would require delaying the reduction in the commercial and recreational ACLs and ACTs specified in Amendment 53 until 2023. If NMFS does not withhold the necessary commercial red grouper and multi-use IFQ allocation, shareholders can begin transferring or landing allocation on January 1, 2022, and NMFS would not be able to retroactively withdraw allocation from shareholder accounts. Delaying implementation of Amendment 53 until 2023 would allow harvest in excess of the level supported by the best scientific information available and recommended by the Council's Scientific and Statistical Committee.

For the aforementioned reasons, the NMFS Assistant Administrator also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 1801 *et seq.*

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 13, 2021.

Ngagne Jafnar Gueye,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.